

73-2-26 Administrative penalties.

- (1)
 - (a) As part of a final order issued under Section 73-2-25, the state engineer may order that a person to whom an order is issued:
 - (i) pay an administrative fine not to exceed:
 - (A) \$5,000 for each knowing violation; or
 - (B) \$1,000 for each violation that is not knowing;
 - (ii) replace up to 200% of water taken; and
 - (iii) be liable for any expense incurred by the state engineer or division in investigating and stopping the violation.
 - (b) The definition of "knowingly" under Subsection 76-2-103(2) shall apply to determinations under Subsection (1)(a)(i).
 - (c) The penalties described in Subsection (1)(a) shall be in addition to:
 - (i) any criminal penalty established for a violation described in Subsection (1); and
 - (ii) any private right of action.
 - (d)
 - (i) Each day of a continuing violation of the provisions described in Subsection 73-2-25(2)(a) or an initial or final order issued under Section 73-2-25 is a separate violation.
 - (ii) A penalty may not be imposed for a violation of the provisions listed in Subsection 73-2-25(2)(a) or an initial or a final order issued under Section 73-2-25 for a violation occurring more than 12 months before the day on which a notice of violation is issued.
 - (e) Separate violations under Subsection (1)(d) may be consolidated for resolution in one enforcement proceeding under Section 73-2-25.
 - (f) The state engineer has discretion to pursue an administrative fine, order requiring replacement, or both.
- (2) Before imposing a fine or ordering replacement under Subsection (1), the state engineer shall consider:
 - (a) the value or quantity of water unlawfully taken, including the cost or difficulty of replacing the water;
 - (b) the gravity of the violation, including the economic injury or impact to others;
 - (c) whether the person subject to fine or replacement attempted to comply with the state engineer's orders; and
 - (d) the violator's economic benefit from the violation.
- (3)
 - (a) The state engineer may require that the water unlawfully taken be replaced after:
 - (i) a person fails to request judicial review of a final order issued under Section 73-2-25; or
 - (ii) the completion of judicial review, including any appeals.
 - (b) The state engineer's order shall require that replacement of water begin within one year of the day on which:
 - (i) the time period for requesting judicial review of a final order issued under Section 73-2-25 expires without a person requesting judicial review of the final order; or
 - (ii) the completion of judicial review, including any appeals.
- (4) Water replaced under Subsection (3) shall be taken from water that the person subject to the order requiring replacement would be entitled to use during the replacement period.
- (5)
 - (a) If the state engineer issues an order requiring replacement, a copy of the order shall be placed in the Division of Water Rights' water rights records.

- (b) The order requiring replacement shall constitute a lien upon the water right affected if the state engineer files a notice of lien in the office of the county recorder in the county where the place of use of the water right is located.
- (c) A notice of lien under Subsection (5)(b) shall include a legal description of the place of use of the water right.
- (6) Any money collected under this section shall be deposited into the General Fund.

Enacted by Chapter 33, 2005 General Session